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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 639

L. J. BLAKEY (SUCCESSOR TO R. E. SCHUMACHER), RECEIVER OF THE FIRST NATIONAL BANK OF NEW BERN, NEW BERN, NORTH CAROLINA, PETITIONER,

vs.

CHARLES J. BRINSON, RESPONDENT.

BRIEF OF THE COMPTROLLER OF THE CURRENCY AS AMICUS CURIÆ.

F. G. AWALT,
GEORGE P. BARSE,
Attorneys for J. W. Pole, Comptroller of the Currency.

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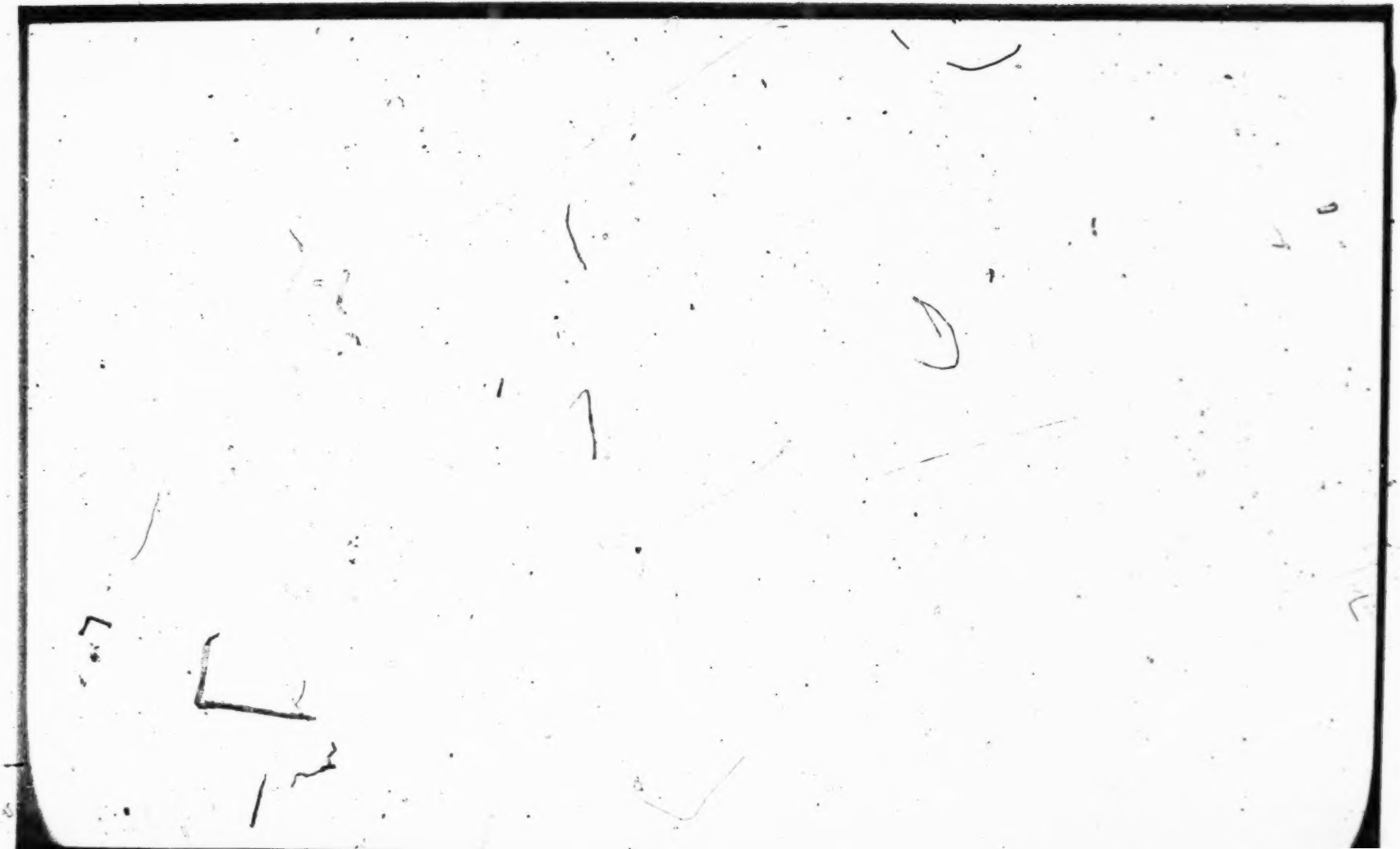

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1931.

No.

L. J. BLAKEY (Successor to R. E. Schumacher), Receiver of the First National Bank of New Bern, New Bern, North Carolina, Petitioner,

vs.

CHARLES J. BRINSON, Respondent.

BRIEF OF THE COMPTROLLER OF THE CURRENCY AS AMICUS CURIÆ.

Comes now J. W. Pole, Comptroller of the Currency of the United States, and, by leave of Court first had and obtained, respectfully submits his brief, as *amicus curiæ*, in support of the petition for writ of certiorari filed by L. J. Blakey, Receiver of the First National Bank of New Bern, New Bern, North Carolina, in the above entitled cause.

I.

Foreword.

Citation of the opinions below, statement concerning the jurisdiction of the Court to issue writ of certiorari, summary of the facts, specification of errors, and argument of the issues involved, have been fully covered in the petition and supporting brief filed by the Receiver

of the First National Bank of New Bern, and therefore reference is here made to the same in the interest of avoiding repetition.

II.

Interest of the Comptroller of the Currency in the Case from an Administrative Standpoint.

The Comptroller of the Currency is charged by law with the liquidation of insolvent national banks (through receivers appointed by him), and with the disbursement of the net proceeds of such liquidation to the creditors of such banks. Before disbursement can be made it is necessary that the creditor, whether general or preferred, establish or prove his claim. An important function of the Comptroller in this respect is to pass upon and allow or reject the claims sought to be established. (Sections 5234, 5235, 5236 U. S. R. S.; U. S. C., ch. 2, Title 12, Sections 192, 193, 194.)

The instant case involves fundamental principles of law concerning the allowance of preferred claims against such banks, and therefore directly affects the administrative functions of the Comptroller with reference to all national banks now in receivership, as well as those which in future may go into receivership.

Obviously it is necessary, in order to avoid discrimination, *that a uniform policy be pursued with reference to the allowance and rejection of preferred claims.* For a period of many years the state of the law, as represented by the Court decisions, has been such as to enable the Comptroller of the Currency to pursue a uniform policy in such matters in all sections of the

country. Such policy has been based upon the decisions of the Circuit Courts of Appeal in the Eighth, Sixth, Ninth, Tenth and Second Circuit (cited and referred to in the Receiver's brief, pages 13-18). Prior to the decision in the instant case in the Fourth Circuit, and prior to the case of *Davis* v. *McNair*, 48 Fed. (2) 494, rendered in the Fifth Circuit (relied upon and followed by the Court below in deciding the instant case), the same policy had been considered to be established, and had been followed, in the Fourth and Fifth Circuits. It was also considered that such policy was in conformity to the principles established by this Court in the cases of *Schuyler* v. *Littlefield*, 232 U. S. 707, 710, 713; *Cunningham, Trustee of Ponzi*, v. *Brown*, 265 U. S. 1, 11; *St. Louis & S. F. R. R.* v. *Spiller*, 274 U. S. 304, 310.

The decision in the instant case (and, incidentally, the decision in the case of *Davis* v. *McNair, supra*) appear to be in direct conflict with the principles of law constituting the basis of the uniform policy heretofore applied in all of the circuits. The result is that until the issues in the instant case are finally settled by a decision of this Honorable Court, there will necessarily be a conflict and inconsistency in the administration of the various receiverships, in that the previous practice will have to be followed *in the districts other than* the Fourth and Fifth Circuits, in deference to decisions controlling in such other districts, and the principles established by the instant case will have to be observed, so far as applicable, in the Fourth and Fifth Circuits.

There are now approximately 800 national banks in receivership liquidation under the supervision of the Comptroller of the Currency throughout the entire country. The national banks in receivership in the Fourth and Fifth Circuits number approximately 200. The speedy relief of depositors and creditors of insolvent banks is now one of the paramount problems of the day. A decision upon the issues of law involved in the instant case, regardless of whether the decision below be affirmed or reversed, will be of inestimable aid to the Comptroller of the Currency in *re-establishing* a uniform policy to govern the treatment of preferred claims, and will unquestionably substantially expedite the liquidation of national bank receiverships by making possible the disposition of numerous other pending suits involving the same issues, and by eliminating future litigation of the same type.

III.

Conclusion.

The Comptroller of the Currency therefore earnestly urges this Honorable Court to entertain the petition for writ of certiorari filed by the Receiver in the instant case.

Respectfully submitted,

F. G. AWALT,
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Comptroller of the Currency.

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